

DOCUMENT #5624

MEMORANDUM

ADOPTED MARCH 10, 1994

To: Boston Redevelopment Authority and
Marisa Lago, Director

From: Brian DeLorey, Assistant Director for Economic Development
Victor Karen, Deputy Director for Economic Development
John O'Brien, Project Manager for Economic Development
Paul Reavis, Assistant Director for Engineering & Design Services

Subject: Charlestown Navy Yard, Reimbursement Agreement with the Boston Water and Sewer Commission for survey work necessary to accomplish the transfer and dedication of existing streets as public-ways by the Public Improvements Commission.

Executive

Summary: This memorandum requests that the Director be authorized to enter into and deliver a Reimbursement Agreement with the Boston Water and Sewer Commission for the purposes of conducting surveys of existing sewer and drain lines within the Charlestown Navy Yard to document and confirm the adequacy thereof. This surveys are necessary to accomplish the transfer and dedication of existing streets as public-ways by the Public Improvements Commission.

In order to accomplish the transfer of Navy Yard streets to the City of Boston Public Improvements Commission ("PIC") and to proceed with the transfer of all existing water and sewer facilities (the "Facilities") located in the Charlestown Navy Yard ("CNY") to the Boston Water and Sewer Commission ("BW&SC"), the Authority, as owner of the Facilities, is required to fund a video survey and related surveys to document and confirm the adequacy thereof. The completion of the surveys has been formally requested as a pre-requisite to the acceptance of the Facilities by BW&SC, and most importantly, for the City's acceptance and dedication of existing streets for public purposes by PIC.

Previously, the Authority adopted a vote authorizing the transfer of the CNY Facilities to BW&SC and further authorized the Director to execute and deliver such agreements, documents or instruments as deemed necessary to accomplish the transfer. Although the Director is authorized to enter into such agreements, the previous approval did not contemplate the expenditure of funds currently sought to complete the required surveys.

Therefore, it is recommended that the Director be authorized to enter into a Reimbursement Agreement (Attachment "A") with the BW&SC to complete the surveys necessary to effectuate the transfer of certain streets in the Navy Yard to PIC. To accomplish this goal and to ensure compliance with city standards, BW&SC will oversee the preparation of plans and specifications, solicitation of competitive bids and will enter into a contract agreement with a qualified contractor to perform the surveys. Based on recent bid prices for similar surveys it is estimated that the total cost for the surveys will not exceed \$50,000 which will be funded by the Office of Capital Planning ("OCP") as part of the previously approved First Avenue Improvements Project.

An Appropriate Vote is Attached:

REIMBURSEMENT AGREEMENT

VOTED: That the Director be, and hereby is, authorized to enter into and deliver a Reimbursement Agreement between the Boston Redevelopment Authority ("BRA") and the Boston Water and Sewer Commission ("BW&SC"), in substantially the form attached hereto, to complete a video survey necessary to accomplish the transfer of certain streets in the Navy Yard to the City of Boston Public Improvements Commission ("PIC"). The surveys are required to document and confirm the adequacy of the existing sewer and drain lines in the Charlestown Navy Yard. The total cost for such survey shall not exceed \$40,000 and shall be funded by the Office of Capital Planning ("OCP") as part of the previously approved First Avenue Improvements Project.

FURTHER

VOTED: That the Boston Redevelopment Authority ("BRA") hereby approves the payment of an amount not to exceed \$10,000 as reimbursement to the Boston Water and Sewer Commission ("BW&SC") for the cost of additional surveys related to the transfer of water, sewer and drain lines within the Charlestown Navy Yard to be completed by BW&SC. These costs shall be funded by the Office of Capital Planning as part of the previously approved First Avenue Improvements Project.

REIMBURSEMENT AGREEMENT

This **REIMBURSEMENT AGREEMENT** (the "Agreement") made this/ ____ day of March, 1994, by and between the **BOSTON WATER AND SEWER COMMISSION**, a public body politic and corporate and political subdivision of the Commonwealth of Massachusetts, organized and existing pursuant to the provisions of Chapter 436 of the Massachusetts Acts of 1977 and having a usual place of business at 425 Summer Street, Boston, MA 02201-1700 (the "Commission") and the **BOSTON REDEVELOPMENT AUTHORITY**, a public body politic and corporate, organized and existing pursuant to Chapter 121B of the Massachusetts General Laws, as amended, and having a usual place of business at One City Hall Square, Boston, MA 02201 (the "Authority"). Collectively, the Commission and the Authority here hereinafter referred to as the "Parties".

PRELIMINARY STATEMENT

The Authority is engaged in the development of the Charlestown Navy Yard ("CNY") as part of the Charlestown Urban Renewal Project and proposes to transfer all right, title and interest it currently has to the Commission in and to all existing water mains and sewers, sanitary sewers, storm drains, catch basins and appurtenances within the CNY (collectively the "CNY Water and Sewer Facilities"). The Commission is willing to accept ownership of the CNY Water and Sewer Facilities provided that a televised inspection is completed and the condition of the CNY Water and Sewer Facilities is acceptable to the Commission. To expedite the televised inspection, the Commission proposes to prepare appropriate plans and specifications, solicit bids for such work in accordance with applicable bidding laws and regulations and to select and enter into an agreement with a contractor to perform the required services on a timely basis. The Authority proposes to reimburse the Commission for certain costs incurred under the televised inspection contract.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the Parties mutually do agree as follows.

1. Contract Documents. The Authority acknowledges that the Commission has subitted copies of the plans and specifications, form contract and related bidding documents (collectively, the "Contract Documents") for the televised inspection contract of the CNY Water and Sewer Facilities (the "Inspection Contract") and such Contract Documents are acceptable to the Authority. Any change orders, extensions or other revisions to the Contract Documents for the Inspection Contract (the "Contract Document Amendments") must be approved in advance by the Authority.

2. Selection of Contractor. The Authority acknowledges and agrees that the Commission has the sole authority to select the contractor (the "Contractor") for the Inspection Contract and the Authority hs no right to disapprove the same. The Inspection Contract shall be executed by and between the Commission and the Contractor. The Authority in no event shall be a party to the

Inspection Contract and shall have no control over the activities of the Contractor in any respect. A copy of the fully executed Inspection Contract and any Contract Document Amendments shall be submitted to the Authority promptly after execution.

3. Copies of Periodic and Final Reports. The Commission shall promptly submit to the Authority after receipt of same, any and all copies of periodic reports and the final report from the Contractor that are required by the provisions of the Inspection Contract. Notwithstanding the foregoing, in the event the Contractor discovers any conditions within the CNY Water and Sewer Facilities that require immediate attention, the Commission agrees to promptly notify the Authority.

4. Access to Videotapes. Representatives of the Authority by notice to the Commission shall have access at all reasonable times to review and examine any videotapes taken under the Inspection Contract, whether the same are in the possession of the Commission or the Contractor. Further, the Authority may request from the Commission copies of such videotapes and the Commission shall provide such copies for a reasonable charge to the Authority.

5. Reimbursement of Inspection Contract Costs. The Authority agrees to reimburse the Commission for all Direct Costs, as hereinafter defined, incurred by the Commission under the Contract Documents or any approved Contract Document Amendment promptly after receipt of a requisition from the Commission. The term "Direct Costs" means those costs attributable to the Contractor under the Inspection Contract and shall not include any staff or internal administrative costs incurred by the Commission. In no event shall Direct Costs exceed the amount of Forty Thousand Dollars (\$40,000.00).

6. Relationship of Parties. Nothing in this Agreement shall constitute the relationship between the Parties to be other than an independent one, it being their intent that this Agreement shall not constitute a partnership, a joint venture or a joint enterprise to any extent and in any respect.

7. Indemnification. The Commission agrees to hold the Authority harmless and to exonerate and indemnify the Authority from and against any claims, liabilities or penalties asserted by or on behalf of any person, firm, corporation, business entity or public agency or body on account of injury or death to persons or damage or loss to property and any other tort or contract claims arising out of any act or omission of the Contractor in connection with the Inspection Contract. With respect to all of the foregoing, the Commission shall indemnify the Authority for and against all costs, expenses (including reasonable attorneys' fees) and liabilities incurred in or in connection with any claim, action or proceeding (judicial, administrative or otherwise) brought against the Authority and shall at the Commission's expense resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to the Authority.

8. Insurance. The Contract Documents for the Inspection

Contract shall contain insurance provisions requiring the Contractor to provide comprehensive public liability insurance; and such other insurance at the levels of insurance that the Authority and the Commission, as their respective standard policy would require. If there should be any conflict between the standard insurance requirements of the Parties, the greater or higher coverage and levels should be used. Further, the Authority shall be named as an "additional insured" under all insurance policies required by the Inspection Contract and prior to the commencement of work by the Contractor, a certificate of insurance shall be provided to the Authority.

9. Notices; Designated Representatives; Amendments.

a. Notices. Any notices, requests, approvals, determinations, consents, submissions, instructions, waivers or other documents or communications required or desired to be given or furnished pursuant to this Agreement (hereinafter, collectively the "Notices") shall be in writing with copies directed, as indicated below, and unless otherwise specifically stated in this Agreement, shall be hand delivered or may be made by depositing the same in the United States mail, first class postage prepaid. If such Notices are to the Authority, the address is:

Director
Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201-1007

with a copy to: Assistant Director for Engineering
& Design Services
Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201-1007

If addressed to the Commission, the address is:

Executive Director
Boston Water & Sewer Commission
425 Summer Street
Boston, MA 02210-1700

with a copy to: Chief Engineer
Engineering Department
Boston Water & Sewer Commission
425 Summer Street
Boston, MA 02210-1700

Either Party may change its respective address by giving written notice to the other in accordance with this Section.

b. Designated Representative. Any Notice from the Authority shall be signed by its Director or his designated representative, which may be changed from time to time. Any Notices from the Commission shall be signed by its Executive Director, or his designated representative, which may be changed from time to time.

c. Amendments. No amendments to this Agreement shall be effective unless in writing and executed by authorized representatives of the Parties.

10. Agreement Binding on Successors and Assigns. The respective provisions of this Agreement shall be binding upon, and inure to the benefit of the public body or bodies succeeding to the interests of the Authority and the Commission.

11. Headings. The Section Headings of this Agreements are intended for convenience only and shall not control or affect the meaning, construction or effect of any provisions hereof.

12. Enforceability. If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining term and provision shall be valid and enforceable to the extent permitted by law.

12. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Parties have caused this Reimbursement Agreement to be signed and sealed by their respective, duly authorized representatives, as of the day and year first above written.

WITNESS:

BOSTON WATER AND SEWER COMMISSION

By: _____

Executive Director

DATE: _____

BOSTON REDEVELOPMENT AUTHORITY

By: _____

Director

DATE: _____

APPROVED AS TO FORM:

Kevin J. Morrison
Acting Chief General Counsel
Boston Redevelopment Authority

APPROVED AS TO FORM:

Henry C. Luthin
General Counsel
Boston Water & Sewer Commission